

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1991 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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BANCO PRODUCTS (INDIA) LTD

Versus

UNION OF INDIA

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Appearance:

M/S TRIVEDI & GUPTA for Petitioners  
MR PB MAJMUDAR for Respondent No. 1  
MR MUKESH R SHAH for Respondent No. 2, 3

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE A.L.DAVE

Date of decision: 21/04/99

ORAL JUDGEMENT

Rule. Mr. M.R.Shah appears for the respondents and

waives service of Rule . With the consent of parties, the petition is heard finally today.

This petition is filed against an order dated January 5,1999 passed by the Commissioner (Appeals) in Stay order No. 120/ 99. The petitioners had challenged an order -in- original dated February 20,1998 passed by the Assistant Commissioner of Central Excise, Division (Audit) , Baroda , respondent No.3 herein, by which he confirmed the demand raised in the show cause notice. The petitioner company filed appeal as well as stay application before the Commissioner of Central Excise and Customs (Appeals), respondent No.2 herein. Respondent No.2 vide the impugned order which was received by the petitioners on February 3,1999 disposed of the stay application by directing pre-deposit of 50% (approximately) of the demand.

The main contention of the learned counsel for the petitioners is that the order cannot be said to be a speaking order in view of the fact that after application of mind and recording reasons, the order was not passed. It is true that in the order, it was stated that respondent No.2 has "carefully considered the stay application and the submissions of the appellants on merits". Looking to the order, however, it clearly appears that the order does not speak of relevant facts and circumstances. Only on this ground , in our opinion, the petition deserves to be allowed and is accordingly allowed. The order passed at Annexure 'B' on January 5, 1999 is set aside and respondent No.2 is directed to decide the application again on merits. We may state that we are not expressing any opinion on merits of the matter and as and when the stay application will be decided by respondent No.2, he will, by recording reasons, dispose of the same in accordance with law. Meanwhile, the authorities will not take any coercive action. The petition is accordingly disposed of. Rule is made absolute. No order as to cost.

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parekh